

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM KEVIN INNES,

Defendant.

DOCKET NO. 5:09 CR 27-2

**RESPONSE IN OPPOSITION TO DEFENDANT BERNARD VON NOTHAUS' NOTICE
OF INTENT TO COMPEL TESTIMONY OF CO-DEFENDANT WILLIAM KEVIN
INNES**

William Kevin Innes, through his counsel, Claire J. Rauscher, Federal Defender, and Erin K. Taylor, hereby opposes defendant von NotHaus' motion to compel co-defendant testimony. In von NotHaus' notice of intent to compel testimony, von NotHaus states that he "believes that the co-defendants will testify in their own defense and thereby waive the Fifth Amendment right to be compelled to be a witness against themselves." Doc. 138. This statement is contrary to the position of William Kevin Innes. In fact, Mr. Innes does not intend to waive his Fifth Amendment right against self-incrimination in the trial of von NotHaus. Furthermore, Mr. Innes retains the right to invoke his Fifth Amendment right against self-incrimination during his own trial.

It is a fundamental principle of our criminal justice system that "[e]very criminal defendant is privileged to testify in his own defense, or refuse to do so." *Harris v. New York*,

401 U.S. 222, 225 (1971). And even though Mr. Innes' trial has been severed from von NotHaus' trial, Mr. Innes nevertheless retains the privilege against self-incrimination as a witness. *United States v. Shuford*, 454 F.2d 772, 777 (4th Cir. 1971).

"[T]he power to compel testimony is not absolute. There are a number of exemptions from the testimonial duty, the most important of which is the Fifth Amendment privilege against compulsory self-incrimination. The privilege reflects a complex of our fundamental values and aspirations, and marks an important advance in the development of our liberty. It can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory; and it protects against any disclosures that the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used." *Kastigar v. United States*, 406 U.S. 441, 444-45 (1972).

Thus, defendant von NotHaus' request to compel the testimony of Mr. Innes is without merit and should therefore be denied.

Respectfully submitted:

/s/Claire J. Rauscher

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DATE: February 9, 2011

CERTIFICATE OF SERVICE

I, Erin K. Taylor, hereby certify that I have served a copy of the attached Response in Opposition to Notice of Intent to Compel Testimony upon the following via electronic filing:

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